

October 28, 2021 at 10:00 a.m.
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VIN ending in 8581 (“Vehicle”). The moving party has provided the Declaration of Aaron Rangel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by MICHAEL MARK PANOPIO and CAROLINE MACARAEG PANOPIO (“Debtor”). It is stated in the Motion that Debtor entered into the contract to purchase this vehicle December 16, 2018. Motion, ¶ 1; Dckt. 15. Exhibit A is a copy of the Contract, for which Debtor agreed to pay \$61,506.63 to purchase the vehicle, financing \$59,506.63 of the purchase price at 15.75% interest over six years, for a total purchase price in excess of \$100,000. Dckt. 20 at 2.

Movant argues Debtor has not made 16.36 pre-petition payments, with a total of \$19,327.91 in pre-petition payments past due. Declaration, Dckt. 18; Information Sheet, Dckt. 21

J.D. Power Market Values Guide Provided

Movant has also provided a copy of the J.D. Power Market Values Guide for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DEBTOR’S OPPOSITION

On October 18, 2021, Debtor filed an opposition claiming:

1. They would like to convert the case in order to save the car from repossession.
2. They need two automobiles and this automobile is essential to their rehabilitation.
3. They will be changing their budget in order to pay for needs essential such as this automobile.

Although Debtor’s opposition was filed four days late, the court notes Debtor filed a declaration indicating good faith attempts to file their opposition on time and unanticipated obstacles. Dckt. 35. Therefore, the court allow the Motion to proceed as if the opposition was filed on time.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$67,928.51 (Declaration, Dckt. 18), while the value of the Vehicle is determined to be \$53,825.00, as stated on the J.D. Power Market Values Guide Valuation Report, which is more than the Debtor’s opinion of retail value stated in Schedules A/B and D, \$45,000.00.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief

is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. See *In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

However, Debtor seeks to convert this case to Chapter 13 and pay Creditor through a bankruptcy plan, or as Creditor may otherwise agree. At the hearing, **XXXXXXX**

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.~~

~~Request for Waiver of Fourteen-Day Stay of Enforcement~~

~~_____ Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.~~

~~_____ Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.~~

~~_____ No other or additional relief is granted by the court.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the~~

hearing.

The Motion for Relief from the Automatic Stay filed by MICHAEL MARK PANOPIO and CAROLINE MACARAEG PANOPIO (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 DODGE CHALLENGER, VIN ending in 8581 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**ELITE ACCEPTANCE CORPORATION
VS.**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 13, 2021. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

ELITE ACCEPTANCE CORPORATION ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Mazda 6, VIN ending in 5581 ("Vehicle"). The moving party has provided the Declaration of Steve E. Christensen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by MARCUS DA MONE BUCKNER ("Debtor").

Movant argues Debtor has only made one payment. Debtor is due for the months of 8/1/2019 forward with payments totaling \$3,698.22 plus attorney's fees and costs. Declaration, Dckt. 20.

Kelley Blue Book Valuation

Movant has also provided a copy of the Kelley Blue Book valuation report for the Vehicle. The Declaration inadvertently refers to the valuation report as "NADA," another popular valuating report service. However, the referenced exhibit (Exhibit C) is a Kelley Blue Book valuation. The Kelley

Blue Book Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,521.79 (Declaration, Dckt. 20), while the value of the Vehicle is determined to be between \$13,793.00 and \$16,781.00, as stated in Kelley Blue Book, where Schedules A/B and D filed by Debtor values the vehicle at \$14,794.00.

11 U.S.C. § 362(d)(1): Relief Based on Lack of Adequate Protection

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

Here it is alleged in the Motion that the current obligation owed to Movant is (\$11,521) and the value of the vehicle is \$13,793. The Kelly Blue Book Guide provided states the listing price to be around \$15,000 (after adjusting (\$1,800) for the mileage). Dckt. 21 at 8.

While a thin cushion, the listing price value, and projected net value after reasonable costs of sale, do not present a sufficient cushion.

11 U.S.C. § 362(d)(2): Relief for Lack of Equity and Not Necessary For an Effective Reorganization

Relief is also sought pursuant to 11 U.S.C. § 362(d)(2). This being a Chapter 7 case there is no effective reorganization that can be made by Debtor or the Trustee. The Trustee has entered a Statement of Non-Opposition (September 21, 2021) and the Debtor has not posed an opposition. Debtor has listed on Schedules A/B and D this Vehicle having a value of \$14,794, which is exactly the amount of debt which Debtor states is secured by the Vehicle. Dckt. 1. Such valuation is inconsistent with the evidence provided by Movant and there is not a recoverable equity in the Vehicle for either the Debtor or the bankruptcy estate.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by ELITE ACCEPTANCE CORPORATION (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion for Relief from the Automatic Stay is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as 2016 Mazda 6, VIN ending in 5581 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

NISSAN-INFINITI LT VS.

DEBTOR DISMISSED:
11/16/2020

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The case having previously been dismissed, the Motion for Relief is overruled as moot.

Nissan-Infiniti LT ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Nissan Pathfinder, VIN ending in 0912 ("Vehicle"). The moving party has provided the Declaration of Aimee Cobb to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Herbert Edward Miller ("Debtor").

Movant argues Debtor has not made more than fourteen (14) post-petition payments, with a total of \$31,582.95 in post-petition payments past due, including the purchase option. Information Sheet, Dckt. 265. Movant also provides evidence that there are more than eight (8) pre-petition payments in default, with a pre-petition arrearage of \$5,677.22. *Id.*

Dismissal and Reopening of The Bankruptcy Case

This Chapter 11 case was dismissed on November 16, 2020. Dckt. 208. FourWs, LLC, Dan Walcott, Deryk Walcott, Julie Walcott, and Thomas Wilson ("Creditors") filed a Motion to Reopen Case on June 3, 2021. Dckt. 225. Creditors requested the court reopen the case for the limited purpose of the court hearing and adjudicating a Motion to Confirm that the Automatic Stay Terminated. This court filed an Order Reopening Case on June 4, 2021. Dckt. 226.

The filing of the bankruptcy petition triggers the automatic stay under 11 U.S.C. § 362(a). Under 11 U.S.C. § 362(c)(2), the automatic stay continues until the case is closed, dismissed, or a discharge is granted or denied, whichever comes first.

Federal Rule of Bankruptcy Procedure § 5010 provides that the debtor or other party in interest may reopen a case pursuant to 11 U.S.C. § 350(b). 11 U.S.C. § 350(b) plainly states that, "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Nothing in the plain language of § 350(b) indicates the reopening of the bankruptcy case reimposes the automatic stay after it has been lifted. *See, In re Burke*, 198 B.R. 412, 416 (Bankr.

S.D. Ga. 1996).) The reopening of the case “is of no independent legal significance or consequence.” (*In re David*, 106 B.R. 126, 128 (Bankr. E.D. Mich. 1989).) Rather,

“The effect of [§ 350] is merely to resurrect the court file from the stacks of the closed cases, or even from the archives, to enable it to receive a new request for relief. The legislative history on the provision is sparse, but it certainly does not contradict our benign interpretation. The Advisory Committee Note to Bankruptcy Rule 5010, which implements § 350, states: “Although a case has been closed, the court may sometimes act without reopening the case. Under Rule 9024, clerical errors in judgments, orders, or other parts of the record or errors therein caused by oversight or omission may be corrected.” This statement implies that the purpose for reopening a case is to allow the court to act on a substantive request for relief, and that the mere reopening, by itself, accords no independent relief.”

Id. at 128–29.

Further, 11 U.S.C. § 349 expressly provides that the dismissal of a bankruptcy case, unless the court orders otherwise:

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 349(b)(3).

Here, neither the order dismissing the case, nor any other order of the court in this case, “orders otherwise” and this vehicle has been reverted in the Debtor.

When §§ 349, 350, 362(a), and 362(c)(2) are read together, it is clear the reopening of the bankruptcy case does not reimpose the automatic stay that has been previously terminated. Here, the automatic stay was terminated on the date the case was dismissed, November 16, 2020. Given the debtor has not filed a new petition, the reopening of the bankruptcy case does not reimpose the automatic stay that was terminated under § 362(c)(2). Therefore, in this case, the automatic stay has not been reimposed by the reopening of the case and it remains lifted as of November 16, 2020.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice, the automatic stay in this case having been terminated by operation of law as provided in 11 U.S.C. § 362(c)(2) upon the November 16, 2020 dismissal of this case (Order, Dckt. 210).